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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 329

HUMBLE PIPE LINE COMPANY, PETITIONER

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

No. 354

NATURAL GAS AND OIL CORPORATION AND MISSISSIPPI RIVER FUEL CORPORATION, PETITIONERS

v.

W. E. WAGGONNER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF BOSSIER PARISH, LOUISIANA

ON WRITS OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, SECOND CIRCUIT.

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

Louisiana has levied ad valorem property taxes on pipelines owned by the respondents within Barksdale Air Force Base. The United States has no financial interest in these taxes. No issue as to taxation of federal instrumentalities is here involved. But the question whether the United States has exclusive

jurisdiction over Barksdale Air Force Base is of vital concern to the federal government. Apart from the District of Columbia, there are within the United States more than 5,000 areas, on which about 1,000,000 persons reside, that are considered by the federal government to be within its exclusive jurisdiction. If such events as the lease of property within the enclave to private enterprises, the purchase of water from municipalities, or the use of the local school system may cause a loss of exclusive jurisdiction, as the court below seems to hold, the status of many, if not most, of those areas—and the laws by which their residents are governed—has been cast in doubt. This is true not only as to the taxation of the persons and private property in federal enclaves but also the applicability of the States' criminal and civil law in those areas.[1] We think it important that this cloud upon federal jurisdiction over the Barksdale Base and other federal enclaves should be removed.[2]

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[1] In this case, Louisiana reserved the right to administer its own criminal laws and to serve its civil process within the Base when the federal government acquired the initial land for the Base. Thus, this case narrowly involves only whether Louisiana tax and civil law applies within the Barksdale Base. But the outcome of this case will determine whether state criminal, as well as civil and tax law, applies to federal land where no reservation has been made by the State.

[2] Jurisdiction over federal areas has been the subject of an exhaustive study and report over a three-year period by a committee of general counsels and other major law officers of the federal agencies most directly concerned. Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, *Report* (G.P.O.) (Part I) April 1956, (Part II) June 1957. The report states that Section 355 of the Revised Statutes of the United States required that a State give its consent to the federal government's acquisition of Land

BARKSDALE AIR FORCE BASE IS SUBJECT IN ITS ENTIRETY TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES WITH EXCEPTIONS WHICH ARE IMMATERIAL HERE

1. EXCLUSIVE JURISDICTION WAS CEDED TO THE UNITED STATES IN 1930

The 1929 appropriation for military purposes included funds for construction of various airbase facilities at Shreveport, Louisiana:

> *Provided*, That the Secretary of War is hereby authorized, when directed by the President, to accept in behalf of the United States, free from encumbrances and without cost to the United States, the title in fee simple to such land as he may deem necessary or desirable, in the vicinity of Shreveport, Louisiana, approximately 25,000 acres, more or less, as a site for an aviation field.

Act of February 25, 1929, c. 316, 45 Stat. 1301, 1304. The lands were deeded to the United States by the

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prior to expenditure of public funds for the construction of improvements on such lands. Article I, section 8, clause 17, of the Constitution, provides for exclusive federal jurisdiction over all property purchased by the federal government with the consent of the state legislatures. The federal government therefore received exclusive jurisdiction over nearly all the land which it acquired in the 100-year period preceding the amendment of Section 355 in 1940 (Act of February 1, 1940, 54 Stat. 19, reenacted October 9, 1940, 54 Stat. 1083, 40 U.S.C. 255), which made federal acquisition of jurisdiction optional rather than mandatory. *Id.*, Part II, pp. 9–10. While federal assent is necessary to federal acquisition of jurisdiction under state statutes, such as that of Louisiana, proffering jurisdiction to the United States, during this 100-year period such assent was presumed. *Id.*, Part II, pp. 48–54. The committee recommended the enactment of general legislation to permit the heads of executive agencies to retrocede jurisdiction over individual federal areas to the States in whole or part. *Id.*, Part I, p. 72. Such legislation has been introduced in the present Congress (S. 815 and H.R. 4433) but has not yet been passed.

City of Shreveport, the State of Louisiana, and Bossier Levee District, and the Secretary of War accepted the deeds (R. No. 354, pp. 58, 66, 71).[3] The conveyance by Shreveport reserved royalties for oil and gas that might be produced from leases on the properties until June 30, 1932 (R. No. 354, p. 57). At that time, Louisiana law, Act No. 12 of 1892, provided that the United States "shall have the right of exclusive jurisdiction over the property" acquired for customhouses, courthouses, arsenals, national cemeteries or for other purposes of the government of the United States. Act No. 12 reserved the right to the administration of the criminal laws of the State and the service of civil process within the area acquired by the federal government (Pet. Br. No. 329, App. 31).

Under settled law, the jurisdiction provided by this statute vested in the United States upon acceptance of transfer of the land. *Mason Co.* v. *Tax Comm'n*, 302 U.S. 186, 207; Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within The States, *Report*, Part II, pp. 48–54. This rule has not been questioned in this case. Even if the State's intention to grant or the federal government's refusal to accept exclusive jurisdiction could be implied from federal activity—for example, as the Louisiana courts have suggested, lease of property within the base for commercial use or grant of a right

[3] From the language of the admissions of facts in these cases (R. No. 329, p. 8; R. No. 354, p. 17), one might infer that the title conveyed was conditioned upon use for airbase purposes. In fact, all conveyances were of fee simple title (R. No. 354, pp. 56, 64, 67, 68, 69, 72). The field was later expanded by other acquisitions, some in condemnation proceedings, but no distinction has been made in this case because of this fact.

of way to a public utility—no such activity had occurred at that time. Nor is there anything to indicate an intention of federal authorities in the 1930's to secure less jurisdiction than was normally acquired over other military establishments. The military departments have been described as following "the traditional Federal policy, almost uniform prior to 1940, that the United States needs to acquire exclusive legislative jurisdiction over the sites of its installations if it is to perform its constitutional functions effectively." *Id.*, Part I, pp. 39–40.

In short, there can be no question that, upon the acquisition of the Base in 1930 with the express consent of, and grant of exclusive jurisdiction by, the Louisiana legislature, the United States acquired the power accorded by the United States Constitution (Art. I, § 8, cl. 17) "To exercise exclusive Legislation in all Cases whatsoever" in the area acquired. It is equally clear that a State lacks power to tax property located within an area of exclusive federal jurisdiction. *Surplus Trading Co* v. *Cook*, 281 U.S. 647. Any intimation to the contrary in the opinion below or in that of the Louisiana Supreme Court in *Murphy Corp.* v. *Fontenot*, 225 La. 379, 73 So. 2d 180, which the court below followed, is a product of a persistent confusion of the immunity of the United States and its instrumentalities from state taxation with a State's lack of jurisdiction within federal enclaves (see R. No. 354, pp. 47–48, 102, 104).

2. THERE HAS BEEN NO PARTIAL RETROCESSION OF JURISDICTION

Nothing has occurred since 1930 to cause the loss of the exclusive jurisdiction over the Base then acquired.

Like the authority to sell or transfer government lands, *Alabama* v. *Texas*, 347 U.S. 272, the authority to retrocede jurisdiction must be found in some Act of Congress, *Offutt Housing Co.* v. *Sarpy County*, 351 U.S. 253, 260.[4] We know of none applicable here. Consequently, even if there was some evidence that federal officials intended to retrocede jurisdiction, such executive action would have been ineffective to accomplish it.

In any event, there is not the slightest indication of any federal intent to retrocede jurisdiction. The basis for the leases at Barksdale for mineral development was the general authority of the executive to develop federal mineral resources which otherwise would be drained by adjoining landowners. 40 Op. Att. Gen. 41. Under this authority and under his delegated authority to make land orders concerning the allocation within the federal government of administrative re-

[4] In the entire history of the United States, Congress has authorized retrocession of jurisdiction in only 29 instances. See Hearings Before the Senate Subcommittee on Intergovernmental Relations of the Committee on Government Operations on S. 815, 88th Cong., 1st Sess. (1963), p. 40. Illustrative are five instances of such actions by the 87th Congress: P.L. 87-160 of Aug. 25, 1961, 75 Stat. 398, authorized the Secretary of the Army to retrocede jurisdiction with respect to Fort Sheridan, Illinois; P.L. 87-180 of Aug. 30, 1961, 75 Stat. 411, retroceded concurrent jurisdiction with respect to two public highways traversing Camp Lejeune, North Carolina; P.L. 87-206 of Sept. 6, 1961, 75 Stat. 475, retroceded jurisdiction with respect to the Atomic Energy Commission installation at Livermore, California; P.L. 87-636 of Sept. 5, 1962, 76 Stat. 436, authorized the Secretary of the Air Force to retrocede jurisdiction with respect to Eglin Air Force Base, Florida; and P.L. 87-660 of Sept. 14, 1962, 76 Stat. 545, authorized the Secretary of the Navy to retrocede jurisdiction with respect to the Clearfield Naval Supply Depot, Utah.

sponsibility for federal lands, the Secretary of the Interior issued five orders transferring the jurisdiction over the oil and gas deposits at Barksdale to the Department of the Interior.[5] Far from indicating an intent to retrocede to Louisiana any part of the exclusive jurisdiction ceded to the military in 1930, the orders expressly provided:

> 3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.
>
> 4. Prior to advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.
>
> 5. Prior to execution of any lease or development authorized by the Department of the Interior, the approval of the Department of the Air Force shall be obtained to assure that there is no interference with the primary use of Barksdale Air Force Base.

Thus, the order explicitly stated that "primary jurisdiction" remained with the Air Force. But even if exclusive jurisdiction over part of the Base had been transferred to the Department of the Interior for mineral leasing, this would be irrelevant. There is nothing in Louisiana's original grant of exclusive jurisdiction to the United States which requires that every portion of the Base be kept within the jurisdic-

[5] Public Land Orders 701, Feb. 21, 1951, 16 Fed. Reg. 1901; 884, Feb. 5, 1953, 18 Fed. Reg. 846; 1807, Feb. 27, 1959, 24 Fed. Reg. 1651; 2178, Aug. 10, 1960, 25 Fed. Reg. 7878; 2639, March 28, 1962, 27 Fed. Reg. 3167.

tion of the military or that forbids its use for non-military purposes. In *Benson* v. *United States*, 146 U.S. 325, it was contended that jurisdiction passed to the United States only over such portions of a military reservation as were actually used for military purposes, and that the United States therefore had no jurisdiction over a homicide which was committed on a part of the reservation used for farming. In rejecting this contention, the Court said (*id.* at 331):

> But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. * * * The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put.

These views equally apply to alleged retrocession of jurisdiction.

The taxation clause of the oil and gas leases is a standard provision long used in leases under the Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. 226, and the Mineral Leasing for Acquired Lands Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351–359. The clause requires the lessee "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States" upon the property of the lessee. Thus, it only allocates the responsibility

between lessor and lessee to pay whatever taxes are otherwise "lawfully assessed" and in no way purports to confer, on persons not a party to the lease, a jurisdiction to tax otherwise lacking. In any event, a waiver of exclusive jurisdiction to permit the assessment of state taxes within an enclave can be made only by Congress (as it did for gasoline, sales, and income taxes in the so-called Buck Act, 4 U.S.C. 104–110), not by an administrative agreement to a clause in an oil lease.

Nor was the federal government's exclusive jurisdiction lost as a result of any of its other activities relied on by the Louisiana courts. There is no indication that any of the Base has been abandoned. Exclusive jurisdiction is not lost either by the lease of property within the enclave for commercial use, *Arlington Hotel Co.* v. *Fant*, 278 U.S. 439, or by a grant to a public utility of a right of way across the enclave, *United States* v. *Unzeuta*, 281 U.S. 138. The United States can use land of which it is the full owner like any other owner without implying that it is abandoning exclusive jurisdiction. And the suggestion that the Base's purchase of water from the parish and the attendance of Base children at state schools (for which the United States makes a contribution) "manifested an intent on the part of the Federal Government not to exercise" or "accept" exclusive jurisdiction (R. No. 354, p. 106), is a *non sequitur* requiring no answer.

CONCLUSION

For the reasons stated here and in the briefs for petitioners, we respectfully submit that the judgments should be reversed with directions to grant the relief sought.

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